IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8197 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIKABHAI JOTIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8197 of 1991

MR IS SUPEHIA for Petitioner

MS MITA PANCHAL AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 09/12/2004

ORAL JUDGEMENT

The petitioner, then an Unarmed Police Head Constable under the District Superintendent of Police,

Panchmahals, the respondent no. 2 herein [hereinafter referred to as, "the Disciplinary Authority"] challenges the order dated 30th December, 1988 made by the disciplinary authority dismissing the petitioner from service and the appellate order dated 18th December, 1989 made by the Deputy Inspector General of Police, Valsad Division, and the revisional order dated 8th August, 1991 made by the State Government.

The disciplinary proceeding was initiated against the petitioner for the alleged act of dereliction in duty which resulted into loss of life. The memorandum of charge was issued on 22nd June, 1988. It was alleged that on 4th May, 1987, one Bai Bali of village Salia, Taluka Baria had made a compliant of breach of peace with respect to the harassment caused to her by the accused Somabhai Bhurabhai, Andarsinh Soma and Gulabbhai. The said complaint was sent to the Police Sub-Inspector, Baria for investigation. The Police Sub-Inspector, Baria sent copy thereof to the petitioner with instruction to visit the place and make inquiry. Pursuant to the said instruction, the petitioner visited the village Salia-Gunna on 26th June, 1987. He recorded the statements of the complainant-Bai Bali and her husband-Manilal Gamji and of the accused Somabhai Bhurabhai according to his will and did not record the correct statements as given out by the said complainant and her husband-Manilal Gamji. After recording the said statements, he did not make report to the Police Sub-Inspector, Baria and retained the papers with him without taking further action. The said Bai Bali was murdered on 14th August, 1987 by the accused and her dead body was thrown away. The offence was registered against the accused persons for offences punishable under Sections 302, 201, 34 IPC. It was alleged that had the petitioner made proper report and taken appropriate preventive measures, the death of Bai Bali could have been averted. The petitioner was thus alleged to be guilty of gross dereliction in discharge of duty. Before the Inquiry Officer, after recording evidence of certain witnesses, on 25th August, 1988, the petitioner admitted his guilt. The petitioner was, however, advised to reconsider his admission. After such reconsideration on 31st August, 1988, he remained present alongwith his next friend and submitted admission in writing. In view of the said admission, the inquiry was not proceeded further and the charge was held to be proved. Thereafter, the petitioner was given notice to show cause why he should not be dismissed from service, which was answered by the petitioner. After receipt of the said reply, by the impugned order dated 30th December, 1988 made by the

disciplinary authority, the petitioner was dismissed from service. The said order was confirmed in the above referred appeal and the revision.

The impugned order of punishment has been challenged on the grounds that the alleged admission of guilt by the petitioner was not voluntary and was procured by the inquiry officer by misrepresentation. It is stated that at the beginning of the inquiry, the petitioner's plea was recorded. At that time the petitioner did not admit his guilt. The said stage having been over, the petitioner could not have admitted his guilt at any stage thereafter and if such admission were made, the same was not valid and could not have been acted upon. Mr. Supehia has submitted that the petitioner was given an understanding that if he admitted his guilt, he would be visited with minor punishment. It is further submitted that even if the petitioner had validly admitted his guilt, it was the duty of the Inquiry Officer to record evidence and to record finding on the basis of such evidence; irrespective of the admission made by the delinquent. It is further submitted that in any view of the matter, the penalty of dismissal from service is disproportionate to the guilt held to be proved against the petitioner.

I am afraid, I am unable to agree with the contentions raised by Mr. Supehia. If the petitioner were made to admit his guilt under duress or by misrepresentation, the petitioner would have immediately complained to the disciplinary authority or any other superior officer. Besides, the inquiry officer, not being the disciplinary authority, could not have agreed to impose minor punishment, in the event the petitioner admitted his guilt. In his reply to the show cause notice dated 4th November, 1988 also, the petitioner did not raise such plea nor such a plea was raised before the disciplinary authority at the time of personal hearing or even before the appellate authority. The said objection was raised for the first time before the revisional authority. The revisional authority did not accept the said plea. In my view, the said plea is not genuine and the challenge to the genuineness of the admission is an afterthought. The contention that the delinquent could not have admitted his guilt in the midst of the inquiry proceeding or that such admission is not a valid admission of guilt, requires to be rejected outright. The contention that the disciplinary authority ought not to have relied upon the admission made by the petitioner but ought to have considered the evidence on record and decided the matter on merit also is equally misconceived

and requires to be rejected.

The submission that the punishment of dismissal from service is shockingly disproportionate to the guilt proved against the petitioner also requires to be rejected. The concerned Police Sub-Inspector, one Shri S.K Ambegaokar, in his evidence before the Inquiry Officer did state that there were frequent occurrences of the offence of murder or attempt to murder with respect to the practice of witch craft in the area. The petitioner was, therefore, specifically instructed to make inquiry and to take necessary preventive measures which the petitioner did not do. It is the matter of common knowledge that Panchmahals district is mainly tribal area and in view of the frequent occurrences of such offences, the petitioner, then a Head Constable, ought to have conducted proper inquiry and taken due preventive measures. The negligence on the part of the petitioner has resulted into one more offence of murder and loss of life. Such gross dereliction in discharge of duty cannot be viewed lightly. If in the opinion of the disciplinary authority, the appellate authority and the revisional authority, the offence was gross enough to invite order of dismissal, this Court, exercising power of judicial review, shall not interfere with such order.

No other contention is raised before me. In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

Prakash*